Supreme Court of the United States

October Term, 1967

No. 1162

THE TIMES MIRROR COMPANY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

SUPPLEMENT TO PETITION FOR REHEARING.

To the Honorable Chief Justice and the Associate Justice of the Supreme Court of the United States:

The Justice Department has just adopted still another theory of newspaper product markets. The Justice Department has filed a memorandum with the Federal Communications Commission urging that the Commission deny a request to transfer a license to operate a television station in Beaumont, Texas, to the publishers of two Beaumont newspapers. The memorandum contends that such a transfer will reduce competition in the relevant product market which it defines as "the broad market of mass dissemination of current news and advertising by the local mass media." (Bureau of National Affairs Antitrust & Trade Regulation Report, No. 357, pp. A-18—A-19)

product market as comprising *local* newspapers, *local* television stations, and *local* radio stations. This product market theory is inconsistent with all four of the product theories advanced by the Government or adopted by the District Courts in the *Times Mirror* and *Citizen Publishing* cases. Although these four theories differed as to which newspapers should be included, they all excluded other media from the product market.

The memorandum is particularly inconsistent with the Government's positions in this case in that it emphasizes that advertisers who wish to cover the local area must select among local media which cover the area with enough penetration to make advertisements commercially effective and persons seeking local news must select among the local media reporting local events. If the District Court in this case had adopted the Government's latest market theory, it undoubtedly would have reached a different result.

The Government's latest action provides further evidence that full review is essential to end the rapidly increasing confusion.

Respectfully submitted,

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